PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADMIRALTY.

Where the master of a vessel recommended a materialman to the engineer as a proper person to do any work needed by the vessel, and the engineer employed him in making some repairs, the master being on board at the time and knowing that the work was going on, it was held that the materialman was justified in believing that the engineer was authorized to employ him upon the credit of the steamer. This case falls within the principle of *The Alfred Dunois*, 76 Fed. 586, and is distinguishable from that of *The H. C. Grady*, 87 Fed. 232, there being here something more than acquiescence upon the part of the master: *The Tiger*, 89 Fed. 384.

Implied Consent of Master

The opinion of Lowell, J., in the recent case of *The Iris*, 88 Fed. 902, will be read with interest by all admiralty lawyers, as being the last word on the vexed subject of liens for supplies and repairs to a vessel in her home port. It contains an excellent statement of the principles to be derived from such cases as *Thomas* v. *Osborn*, 19 Howard, 22, *The Kalorama*, 10 Wall. 204, and *The Lottawanna*, 21 Wall. 558. In the present case the vessel had been delivered to a vendee upon part payment of the purchase money, under an agreement whereby it was provided that she could be retaken by the owner upon failure to pay the balance, the title not to pass until said balance was paid. The apparent owner put a master in charge of the vessel, and repairs were ordered by him. The vendee becoming hopelessly insolvent, the owner retook the vessel and denied that she was liable. Judge Lowell held that there was nothing in the case to put the libellants on inquiry and that they were justified in relying upon the holding out of the vendee as the owner.

Maritime Liens, Repairs Ordered by Ostensible Owner

In answer to the contention of the claimant that in the vessel's home port the presumption is against the lien, the court said: "If the presumption be taken to mean that the authority of the master of a domestic vessel to contract for her

ADMIRALTY (Continued).

repair cannot always be presumed, the statement is reasonable. The owner of a domestic vessel in some cases must be sought out, and the authority of the master to bind him will not be presumed as readily as in the case of a foreign vessel whose owner is absent; but where the master had authority to order the repairs, or where they were ordered directly by the owner, it seems that credit is to be deemed to have been given to the vessel, or to the owner personally, or to both, according to the laws and usages of the domestic port, and the circumstances of the particular case."

Proper Ballast, Owner's Risk

Judge Brown, of the Southern District of New York, has displayed his customary good sense in throwing the risks of loading a vessel for her first voyage upon her owners and not upon the charterers or shippers. The amount of ballast needed by a new vessel, taken in connection with the cargo, is always in some measure a matter of experiment; and it is eminently just and proper that the risk of any uncertainty in this respect should fall on the owner; this is especially so where the ship is guaranteed to be "tight, staunch and strong, and in every way fitted for the voyage." As the jettison of part of the cargo was made necessary by the unseaworthy condition of the ship, it was held that the Harter Act did not exempt the owners from liability: *The Whitlieburn*, 89 Fed. 526.

Rights of Passengers

It is well settled that seamen who have signed articles for a voyage, cannot be compelled to fulfill their contract if they refuse to go to sea because they believe the vessel unseaworthy, unless upon a survey she be found staunch and properly equipped. In the case of *The Guardian*, 89 Fed. 998, it is held that passengers are entitled to as much protection as the crew, and have the right to act in the light of appearances. Consequently, where a vessel appeared unseaworthy and was so reported in the public press, and the experts who surveyed her said they could not "recommend her for a passenger vessel in her present condition," the passengers were allowed to recover the price of their tickets, although the vessel subsequently performed the voyage in safety and clearly showed that she had been entirely seaworthy.

ASSIGNMENTS FOR CREDITORS.

It was held in *Bellows* v. *Bellows*, 53 N. Y. Suppl. 853, that,

ASSIGNMENTS FOR CREDITORS (Continued).

while a person may by proper assignment convey the right to use his name in any business, yet such right does not pass under the ordinary phraseology of a general assignment for the benefit of creditors.

Right to Use Name

ATTORNEYS.

The Supreme Court of New York has added another to the many cases dealing with contingent fees. In *Taylor* v. *Long Island R. Co.*, 53 N. Y. Suppl. 830, the plaintiff in an action for negligence agreed to pay her attorney seventy per cent. of the amount recovered, but nothing if he failed to collect damages. A large sum was recovered, of which the attorney paid over seventy per cent. to his client and retained the remaining thirty per cent. and all the costs recovered. A motion was made to compel him to pay over these costs. The court held that the costs were a part of the "amount recovered" and did not belong to the attorney, but that he had a right to thirty per cent. of them under his agreement. The language of *Re Bailey*, 31 Hun, 608, and *Delaney* v. *Miller*, 84 Hun, 244, was disapproved as tending to the theory that the costs belonged absolutely to the attorney. He has, in fact, only a lien on them: *Starin* v. *Mayor*, 106 N. Y. 87.

Costs, Right of Lien

BANKRUPTCY.

Though the Bankruptcy Law of July 1, 1898, prohibits the filing of petitions until one or four months after its date, yet as it provides that it shall go into full force and effect upon its passage, proceedings under conflicting state insolvent laws should not be begun after that date: *Parmenter Co.* v. *Hamilton*, 51 N. E. (Mass.) 529.

Bankruptcy Law, Date

BANKS AND BANKING.

State Saving Bank of Detroit v. *Foster*, 76 N. W. (Minn.) 499, is of some importance as defining who are depositors in the eye of the law. Admitting that one bank may be a depositor of another, it was, nevertheless, held that the certificate of deposit issued in consideration of the right to draw on the payee bank for a like amount did not constitute the payee bank a depositor under the statute.

Who are Depositors

CARRIERS.

Street Railway, What is, Taxation

A railway, running along the streets within one city and over a highway to a neighboring city under a law allowing any "street-railway companies" extending their lines beyond the limits of their town, to build on any highway of a width of 100 feet or more, was operated at first by steam engines, but afterwards by overhead trolley. Its main business was that of transporting passengers, but some express and freight cars were run. On appeal from tax settlement, held to be a "street railway," and not a "railway corporation" within Code 1873, § 1317, providing for assessment of such corporations by the State Executive Council; *Cedar Rapids & M. C. Ry. Co.* v. *City of Cedar Rapids* (Sup. Ct. of Iowa), 76 N. W. 728.

CONFLICT OF LAWS.

Testamentary Trust, Law of Domicil

The undoubted rule that the *lex domicilii* governs the construction of a will, was applied by the Court of Chancery of New Jersey to a bequest to a trustee in New Jersey, for a married woman's sole and separate use. The trust by the law of Pennsylvania, the testator's domicil, would be active, but by New Jersey law would be passive only. The fact that the trust had its situs in New Jersey and was to be carried out by a citizen of that state, was held immaterial. The Pennsylvania law governed: *Rosenbaum* v. *Garrett*, 41 Atl. 253. *Cross* v. *U. S. T. Co.*, 13 N. Y. 330 (1856), is in accord. See, also, *Spindle* v. *Shreve*, 111 U. S. 542, 547 (1883); *Ruebsam's Est.*, 26 W. N. C. (Pa.) 311 (1890); *Hope* v. *Brewer*, 136 N. Y. 126, 32 N. E. 558 (1892). In the latter case a bequest in trust, valid by the law of the state of administration and of the domicil of the trustees, was enforced in New York, the domicil of the testator, although by the law of the latter state it would be void as a perpetuity. Interstate trusts seem to be secure if upheld by either law. In *Fowler's Appeal*, 125 Pa. 388 (1889), s. c., 17 Atl. 431, 23 W. N. C. 500, the laws of three states were considered. The law of the domicil of the settlor and of that of the *cestui que trust* favored the trust, which was invalid by the law of the trustee's domicil. The court upheld the validity of the trust.

CONSTITUTIONAL LAW.

The Supreme Court of California has decided that the

CONSTITUTIONAL LAW (Continued).

Exemptions from Collateral Inheritance Tax, "Special Laws"

constitutional provision (Art. 4, § 25, sub-d. 16, California Constitution) forbidding local or special laws, or laws releasing or extinguishing in whole or in part the liability of any corporation or person to the state, is not infringed by the retrospective exemption from the inheritance tax of certain classes of corporations and relatives (St. 1897, p. 77, amending Act of March 23, 1893). The court refers to the Maryland case of *Montague* v. *State*, 54 Md. 481 (1880), which pronounced valid an amendment to the collateral inheritance law of that state, putting the "husband" among the exempted classes.

Exemption of Residents Only, "Privileges and Immunities"

The amended statute in California included, among those exempt, the "niece or nephew when a resident of this state." This distinction between resident and non-resident relatives was held unconstitutional under Const. U. S., Art. 4, § 2. The court, thereupon, rejected the invalid limitation, and, construing the statute as if such part had not been enacted, exempted all nieces and nephews: *In re Stamford's Estate*, 54 Pac. 259.

Fourteenth Amendment, Private Schools, Exclusion of Colored Pupils

The Maryland Institute for the Promotion of Mechanic Arts, a corporation of Maryland receiving an annual appropriation from the state, in 1893 entered into a contract with the city of Baltimore for the instruction of a certain number of pupils to be appointed by the city councilmen. One councilman appointed a colored youth to the scholarship. The appointee was denied admittance on account of his color, and filed a petition for a mandamus requiring the school officers to admit him. Decree dismissing petition was affirmed by the Supreme Court of Maryland. The court said, " . . . suppose . . . that there was a school of great merit, conducted exclusively for the instruction of colored pupils in branches of learning not taught in the public schools, and that the legislature saw fit to appropriate money for the tuition of a number of colored pupils. It is not probable that such action would be assailed as forbidden by the Fourteenth Amendment because of an unjust discrimination against the whites:" *State* v. *Maryland Institute*, 41 Atl. 127.

The Illinois Act (Laws 1879, p. 113) which provides that receiving deposits by an insolvent bank shall be punished as

CONSTITUTIONAL LAW (Continued).

Insolvent Banks, Embezzlement, Fourteenth Amendment

embezzlement, does not deprive one convicted of such offence of any liberty or property right guaranteed by the Fourteenth Amendment.

The privilege which the banker had of taking deposits in insolvency before the passage of the Act was not a "matter of personal prerogative or property right:" *Dreyer* v. *Pease*, 88 Fed. 998. The Oklahoma Act (Statutes 1893, c. 7, sec. 1), of similar effect, was sustained in *Winfield* v. *Ott*, 54 Pac. 714.

Railroads, Legislative Control of Fares, Impairment of Charter Contract

In *Pingree* v. *Mich. Cent. R.*, 76 N. W. 635, the Supreme Court of Michigan has applied the doctrine of the Dartmouth College case to a railroad, the charter of which gave it the right of fixing its own rates under a maximum of three cents a mile. This charter was held to tie the hands of the legislature, although the railroad originally was but an unimportant local concern, and since that time, under legislative permission to extend its lines, has grown into a gigantic state and interstate system.

CONTRACTS.

Conflict of Laws, Place of Execution

When a lender is a resident of one state and the borrower is a resident of another, and the evidence of debt, and the deeds given to secure same, as well as all other papers connected with the transaction, are executed in the state of the borrower's residence, and there is nothing in the papers to indicate that it was the intention of the parties that the contract should be controlled by the law of the state of the lender's residence, the contract, as to its validity, form and effect, will be controlled by the law of the state in which the contract was executed: *Hollis* v. *Covenant Building and Loan Ass'n* (Supreme Court of Georgia), 31 S. E. 215.

Fraud, Inadequacy of Consideration

The Supreme Court of Georgia, in *Hoyle* v. *Southern Saw Works*, 31 S. E. 137, has reiterated the rule that while inadequacy of price alone will not be sufficient ground on which to set aside a contract, yet that circumstance, taken in connection with others of a suspicious nature, may afford such a presumption of fraud as would authorize the court to make such a decree.

CONTRACTS (Continued).

The payment of money for lobbying being against public policy, the court will not compel contribution between partners on account thereof, nor will it, when one partner is chargeable with the receipts, allow him credit for money so expended: *McDonald* v. *Buckstaff et al.* (Supreme Court of Nebraska), 76 N. W. 476.

Lobbying, Contribution

In *Heilbroun et al.* v. *Herzog*, 53 N. Y. Suppl. 841, (Supreme Court, App. Div. of New York), the plaintiff, relying on the defendant's statement to a mercantile agency that he owned certain property, sold him goods on credit, taking notes for the purchase money. Subsequently learning that the statements were incorrect, the plaintiff called on defendant, and being informed that the statement was a mistake, expressed himself as satisfied, and did not demand the goods or the price, nor did he offer to return the notes. Five months later, and before the notes were due, the plaintiff brought an action to recover the price of the goods. Held, that plantiff had waived his right to rescind either the entire contract or that portion of it relating to the time of payment.

Rescission, Waiver

The perennial question involving the statute of frauds comes this month from Wisconsin, the Supreme Court of that state deciding that an oral agreement to purchase growing timber and manufacture it, is within the statute and unenforceable; and that a written collateral agreement between two of the partners, reciting that a certain portion of the profits of such purchase should be shared by one of them "and his associates" is not a sufficient memorandum of a partnership with one who was not a party thereto, but was alleged to be one of the "associates:" *Seymour et al.* v. *Cushway*, 76 N. W. 769.

Statute of Frauds, Contract for Purchase of Growing Timber

By a statute of New York (Laws 1892, c. 602, § 6; Laws 1893, c. 66) it is provided that no one shall do business as a plumber till he has passed an examination and obtained a certificate of competency and has had himself registered; a failure to comply being made a misdemeanor. In *Johnston* v. *Dahlgren*, 52 N. Y. Suppl. 555, the question was raised whether a plumber, who had not obtained his certificate and registered, could maintain suit for work done and materials supplied. The majority held that it did not need "the citation of authorities to establish the proposition that, as the contract to do plumbing under these

Unregistered Plumbers, Suit for Work and Materials

CONTRACTS (Continued).

circumstances is unlawful, the courts will not give any aid in enforcing it, and will not permit a person to recover anything because he has performed it: Broom, Leg. Max. 576." Ingraham, J., delivered a very vigorous dissent, he being of the opinion that "where a statute declares an act which was before legal to be illegal, and provides a penalty for a violation of the statute, that penalty is exclusive."

CORPORATIONS.

Limits of Charter Power, Holding of Real Estate

Pullman's Palace Car Company seems to figure in litigation in which the results reached cannot but be regretted by all who are interested in sound legal development. Having had the benefit of judicial aberration in the long litigation with the Central Transportation Company, a certain rough justice was done when the corporation was made to suffer lately by the decision of a bare majority of the Supreme Court of Illinois in *People, ex rel.* v. *Pullman's Palace Car Co.*, 51 N. E. 664. The proceeding was an information in the nature of *quo warranto* to forfeit the charter of the respondent for abuse of its chartered authority "to purchase, acquire and hold such real estate as may be necessary for the successful prosecution of its business." The alleged abuse consisted in maintaining for many years without objection from the state a business block in the city of Chicago, in which it rented rooms not needed for the use of the corporation; in likewise maintaining a boiler plant, from which the corporation sold the surplus steam; in likewise maintaining a town with highways, sewerage, water and light systems and schools, churches and business houses—all erected and maintained, not for profit, but merely for the purpose of creating a community of skilled workers and artisans who, under such conditions, could best perform, it was thought, the grade of work essential to the successful prosecution of the business of the corporation. A majority of the court undertook to distinguish the many cases in which similar exercises of power (though on a smaller scale) have been countenanced by courts—on the ground that in those cases the acts done were "necessary," whereas in the present case they were expedient merely. An exception was made in the case of the business block and the power plant, on the theory that the surplus capacity in each case might at some time be required by the corporation itself. The dissenting opinion of three of the justices is a satisfactory refutation of

CORPORATIONS (Continued).

the position of the majority. It is, perhaps, to be regretted that the true function of a corporate charter was not more carefully considered. The function of a charter is not to confer power but to define the scope of the corporate business. The real question in this case was whether the respondent was engaging, *as a business*, in an enterprise beyond the scope of its charter. Clearly it was not. The activities which were complained of were engaged in, not as an end in themselves, with a view to profit, but as a means to an end—the end being the successful prosecution of the very business which the charter defines.

Stock Paid for in Property, Fraudulent Over-Valuation

It will be remembered that the Supreme Court of Alabama, in *Elyton Land Company* v. *Birmingham Warehouse & Elevator Co.*, 92 Ala. 425, made a careful investigation and statement of the law in regard to fraudulent overvaluation of property exchanged for the stock of a corporation. The same court was called upon to deal with this question again in *Lea* v. *Iron Belt Mercantile Company*, 24 So. 28. A demurrer to a creditor's bill was filed on the ground (*inter alia*) that the bill charged no fraud against the defendant. The demurrer admitted, however, an averment that the appellant and his associates had conveyed to the corporation real estate (for which they had just paid $90,000) as full payment for stock of the par value of $1,250,000. After citing the earlier decision, the court observed: "No other charge of fraud was necessary than such as is inferrable from the above averment."

Ultra Vires Contracts, Guaranteed Stock

A late case on the subject of *ultra vires* contracts of corporations has arisen in New York, a jurisdiction which, on that question, has always held views peculiar to itself. A loan association, which was authorized to do business only on the "mutual" plan, issued stock guaranteed to pay a certain dividend, and as securities therefor deposited certain mortgages as a sort of collateral. Having gone into the hands of a receiver, the latter brought suit in equity to recover the securities. The court, in pronouncing judgment, after emphasizing the fact that, while the contract was *ultra vires*, it was neither *malum in se* nor *malum prohibitum*, continued: "The receiver, without restoring, or offering to restore, to these defendants the money obtained from them through this device, now asks a court of equity to take from the defendants these mortgages which

CORPORATIONS (Continued).

represent their monies. When did a court of equity, knowingly, give active assistance to a suitor confessedly pursuing innocent parties for the purpose of robbery? The court has sometimes refused to aid the innocent in the enforcement of tainted contracts, or contracts void from public policy; but it has uniformly refused to assist the wrongdoer, as in the Utica Insurance Cases:" *Dickinson* v. *Continental Trust Co.*, 52 N. Y. Suppl. 672.

CRIMINAL LAW.

Accomplice

The Supreme Court of New York, in *People* v. *Winant*, 53 N. Y. Suppl. 695, decided that a bribe taker is an accomplice of the bribe giver, and hence his testimony must be corroborated.

Rape, Condonation by the Injured Individual

The rule that a public prosecution is under the control of the public, and not the injured individual was exemplified in *State* v. *Newcomer*, 54 Pac. 685. In this case the defendant was arrested on a charge of rape, but the parties agreed that a marriage should take place, and the prosecution should be discontinued. The marriage took place, and they lived together as man and wife, the prosecution having been dismissed and the costs taxed to the defendant. Subsequently the defendant refused to live with his wife on hearing of rumors that she was having improper relations with other men. Her father then filed the complaint in this case for rape. The above facts were set up as a defence. Held, no defence.

DAMAGES.

Remoteness, Mental Suffering

In *Braun* v. *Craven*, 51 N. E. (Ill.) 657, the court refused, in accordance with precedent, to allow damages for mental suffering alone, unconnected with any physical injury. It appeared that the defendant had used threats and sharp words to plaintiff, which caused her a nervous shock which resulted in St. Vitus' dance. It was held that the damage was not the natural and probable consequence of plaintiff's act. See, *accord*, *Scheffer* v. *R. R. Co.*, 105 U. S. 249; *Ewing* v. *Ry. Co.*, 147 Pa. 40; *Railway Comr's* v. *Coultas*, 13 App. Cas. 222; *Mitchell* v. *Ry. Co.*, 151 N. Y. 107.

ELECTIONS.

Ballots, Construction of Statute

The Supreme Court of Minnesota, construing a statute (Gen. St. 1894, § 30) providing that the method of determining the largest number of votes polled at the last preceding general election by a political party shall be by taking the average vote received by such of its candidates as were not endorsed by any other party, holds that it does not apply to a case where each of two independent parties separately nominate all of the candidates of the other: *Higgins et al.* v. *Berg*, 76 N. W. 788.

EVIDENCE.

Confession of Co-Conspirator, Impeaching Witness, Accomplice

In *Collum* v. *People*, 54 Pac. (Cal.) 589, it was held that a confession of one conspirator is not admissible against another if made after the alleged crime is complete and the object of the conspiracy accomplished, nor can such evidence, itself inadmissible, be admitted to impeach the credit of the witness, unless it clearly and directly contradicts some prior portion of his testimony. An accessory after the fact is not an accomplice, and a conviction on his uncorroborative testimony will stand.

Dying Declarations

Stephens v. *Comm.*, 47 S. W. (Ky.) 229, is an instance of the rule that dying declarations are admissible if the declarant himself anticipates death as imminent. There the declarations were admitted, although the physician attending him was encouraging him by holding out hopes of his recovery, the declarant himself expressing his expectation of death, and his condition being very precarious, his lung perforated, and blood spurting forth at every cough or gasp.

Evidence of Usage to vary a Written Contract

Two cases in the New York Supplement serve to define the boundaries of the rule which admits evidence of trade customs and usages to vary the apparent meaning of written contracts: In a county court of Cataraugus case, *Bonnold* v. *Glasser*, 53 N. Y. Suppl. 1021, evidence was admitted that a "thousand" bricks were to be computed not by number but by cubic space, it being shown that such was the universal usage among bricklayers on the principle that trade contracts are made with reference to all usages of such trades, and are to be interpreted in the light thereof; but in the Supreme Court (Appellate Division), in the case of *Herberger* v. *Johnson*, 53 N. Y. Suppl. 1057, an

EVIDENCE (Continued).

action to recover commissions for "placing" a loan excluded evidence that "placing" a loan included the payment of all expenses, for the reason that use of the word "place" was too familiar and well settled to allow of expert testimony to interpret its meaning.

Judicial Notice

In *Kokes* v. *State*, 76 N. W. (Neb.) 467, the court took judicial notice of the United States Census, the school census taken by authority of a statute of the state and by the officers empowered for the purpose, and of the state and county elections and the result of each and all of them.

Refreshing Memory, Independent Recollection

It is a well settled rule that a witness may refresh his memory by referring to a memorandum made at or near the time of the transaction in question. This is sometimes called a rule of necessity and is even extended where circumstances call for it. Where an employer always looked over and verified certain memoranda or entries made by his book-keeper, he was allowed to testify as to the facts contained in such entries, though he had no independent recollection of them even after referring to the paper. The ground adopted by the court was that the witness at the time the entries were made knew they were correct: *Clark* v. *Bank*, 52 N. Y. Suppl. 1064.

This seems to be the practice in some other jurisdictions, both as to the admission of entries made by a person other than the witness and as to the lack of necessity of independent recollection: *Borrough* v. *Martin*, 2 Camp. 112; *Anderson* v. *Whalley*, 3 C. & Kir. 54; *R.* v. *St. Martin's*, 2 A. & E. 210; *Russell* v. *Coffin*, 8 Pick. 143; *Pigott* v. *Halloway*, 1 Binn. 436.

FRAUDULENT CONVEYANCES.

Return of Portion of Assigned Property

Guichtel v. *Jewell*, 41 Atl. (N. J.) 227, contains an equitable solution of a frequently recurring difficulty. An insolvent debtor had made a fraudulent assignment of property to which he became heir, to a creditor, whose claim, however, was considerably less than the property assigned; as it was not proved, however, that the assignee was aware of assignor's fraudulent intent, the court allowed the assignee to keep such sum as would repay her, turning over the balance to assignor's receiver.

GUARANTY.

Hawey v. *First National Bank*, 76 N. W. (Neb.) 879, is a sample of a very common class of business transactions. Hawey, wishing to assist his son, signed a guaranty to the bank for $7000 of any loan or discount to the son within one year. Several loans were made and were renewed by the son's notes from time to time beyond the year. It was held that the notes were not taken in payment of, but simply to represent, the original loan, and hence the father was liable. The extensions of time were excused on the ground of a well proved usage.

Payment, Extension of Time

HUSBAND AND WIFE.

Hager v. *National German-American Bank*, 31 S. E. (Ga.) 141, has the interest which almost always attaches to a case involving a conflict of laws. A married woman living in Tennessee, where the common law restrictions as to her power to contract, still exist, executed in that state a promissory note, which, however, was dated in Minnesota, where a married woman may make such an instrument. It was held by the Supreme Court of Georgia that the law of the place of performance cannot be invoked to aid a person who is seeking to enforce a contract which is absolutely void at the place where it was executed.

Contracts of Married Women

In *Kunze* v. *Kunze*, 53 N. Y. Suppl. 938, it was decided that a reasonable allowance of alimony will not be modified, because the husband has lost employment through his wife's acts; at best, such facts may be used as a defence in proceedings for contempt for non-payment.

Divorce, Alimony

No alimony can be allowed where a decree is entered declaring a marriage void *ab initio;* it is based upon the husband's duty to support his wife and cannot be claimed by one who, in the eye of the law, never was his wife: *Park* v. *Park*, 53 N. Y. Suppl. 677.

Marriage, Alimony

INSURANCE.

Action was brought on a life insurance policy taken out by G. B., who was killed while riding on a locomotive. He had been riding on the passenger car, but left it, at the invitation of the railroad superintendent, to ride on the locomotive, where he was killed in a wreck. The insurance policy provided, *inter alia*, that the company should not be liable if death ensued

Accident Policy, "Conveyance," "Passenger"

INSURANCE (Continued).

while the insured was "in or on any such conveyance [using steam power] not provided for transportation of passengers." Held, that the company was liable, since the whole train, including the engine, constituted a "conveyance." Held, also, that the insured, when killed, had not ceased to be a "passenger" under another clause in the policy which allowed a double recovery for death "while riding as a passenger in any passenger conveyance using steam as a motive power:" *Berliner* v. *Travelers' Ins. Co.*, 53 Pac. (Cal.) 918.

Accident Policy, Homicide by Lunatic

The Federal courts hold that where an accident policy excepts "intentional injuries inflicted by the insured or any other person," the company is, nevertheless, liable for "death caused by the voluntary act of the assured, when his reasoning faculties were so far impaired that he was not able to understand the moral character, or the general nature, consequences, and effect, of the act he was about to commit." Where the death is caused, not by the assured, but by a third person in the state of mind just described, it would seem but logical to hold the insurance company liable, and such a result was reached in *Berger* v. *Ins. Co.*, 88 Fed. 241.

JUDGMENTS.

Lien, Consent to Extend

In accordance with principle and authority, the Circuit Court of the Southern District of California has held, *Savings and Trust Co.* v. *Bear Valley Co.*, 89 Fed. 32, that the period for which a judgment lien exists by statute cannot be extended by consent or agreement of the parties thereto.

LANDLORD AND TENANT.

Lease, Destruction of Portion of Building, Abatement of Rent

In *Humiston, Keeling & Co.* v. *Wheeler*, 51 N. E. 893, a five story building was rented to defendant, with the exception of a few rooms on the second and fourth floors. Before the expiration of the lease, a fire occurred in the building, whereby the interior was burned out down to the first floor, but the walls remained intact. The first floor was so covered with debris as to be untenantable.

LANDLORD AND TENANT (Continued).

In an action on the lease for rent, the Supreme Court of Illinois held that there was not such a "total" destruction of the building as would extinguish the lease, since (1) the supplying of a new roof and floors would have been "repairs" and not the "creation of a new building," and (2) the lease included both the building and the land, so that even if the building had been totally destroyed, there would have been a subject matter, the land, upon which the lease could have operated. The theory of the survival of a lease, after the destruction of the demised premises, is discussed by Mr. Joseph H. Taulane in an interesting article in 29 Am. Law Rev. 351.

Lease, Misdescription

A novel case of misdescription in a lease came before the Chancery Division in *Cowen* v. *Truefitt* [1898], 2 Ch. 551. The lease was of the second floors of 13 and 14 Old Bond street, and granted a right of ingress and egress by the staircase in No. 13. It appeared that there was no staircase in No. 13, it having been torn out before the lease was made; but there was a staircase suited for the lessee's use in No. 14, which lessor refused to allow lessee to use, wherefore this action.

The defendant contended that a wrong description could be cut out of the instrument, but that something else—in this case the word "14"—could not be substituted for it. The court held, however, that the intention of the parties was to grant a right of way over the "staircase" which led up to the demised premises, and that the said staircase had merely been misdescribed; and this fact was apparent from the lease, and decided in favor of the plaintiff. While there is no decision exactly in point, it is held that where a deed may operate in one of two ways—one consistent with the evident intention of the parties and the other opposed thereto—it shall be construed to effectuate the intent: *Solly* v. *Forbes*, 4 Moo. 448; *Hotham* v. *E. India Co.*, 1 L. R. 638. In case of uncertainty in applying the description to the premises demised, the intention of the parties as to the extent of the demise is usually a question for the jury: *Liley* v. *Mayers*, 25 Pa. 398; *Putnam* v. *Bond*, 100 Mass. 58; but where the language of a lease is not ambiguous, evidence as to the intention of the parties is not admissible: *Davis* v. *Renisford*, 17 Mass. 207; *Brainard* v. *Arnold*, 27 Conn. 617; *Clark* v. *Bayard*, 9 N. Y. 183.

LIBEL AND SLANDER.

Privileged Communication Reflecting on a Lawyer

The Appellate Court of Indiana, in *Samples* v. *Carnahan*, 51 N. E. 425, held that where one business acquaintance voluntarily writes to another advising him if a certain note of the acquaintance for $50 was in the hands of a certain "jack-leg lawyer," to call it in, as he was in danger of losing it entirely, and that his money was safer where it was than in the hands of such a lawyer, he cannot excuse himself when sued for libel on the ground that it was a privileged communication.

MALICIOUS PROSECUTION.

Privileged Communications, Attorney and Client

The Supreme Court of Minnesota, in *Cole* v. *Andrews*, 76 N. W. 962, was of the opinion that a citizen going to the county attorney and communicating certain facts to him for the purpose of having a prosecution for a public offence instituted, does not give rise to the relation of attorney and client, and the communication is not privileged, and cannot be treated as such if he is afterwards sued for malicious prosecution.

MASTER AND SERVANT.

Discharge, Damages

Two familiar principles are illustrated in *O'Neill* v. *Traynor*, 53 N. Y. Suppl. 918, to wit: (1.) That when a servant has been wrongfully discharged before the end of her term, the burden is on the master to show that she neglected to seek for, or refused to accept similar employment. (2.) That though the servant sue before the expiration of the term, she may, if the trial does not take place until after such expiration, recover damages for the entire term.

MORTGAGES.

Foreclosure, Redemption

Phillips v. *Yoeman*, 41 Atl. (N. J.) 104, is a curious illustration of the ambiguities that may occur in even a carefully drawn legal instrument. A two years' mortgage, with the usual option to the mortgagee to declare the principle due upon non-payment of interest, contained the unusual provision that the mortgagor should "have the right to redeem any or all of the mortgaged property" at any time prior to the two years hereinbefore mentioned upon payment of specified sums. Upon bill to foreclose within the two years,

MORTGAGES (Continued).

it was argued for plaintiff that this clause was intended to be inoperative, in case the time for payment of the entire debt had arrived, whether by limitation or by default; while defendant's counsel conceded plaintiff's right to foreclosure, but insisted upon a right of redemption being expressed in the decree. The court, however, took an intermediate view, viz.: that under New Jersey practice there could be no redemption after foreclosure, wherefore it necessarily followed that plaintiff's right to foreclose was suspended until the expiration of the two years.

Restricting Equity of Redemption

Biggs v. *Hoddinott* [1898], 2 Ch. 307, is an important case. A mortgage of a hotel to a brewer contained a provision that the mortgagors would purchase their beer and liquors solely from the mortgagee. Upon motion to enjoin their purchase elsewhere, it was argued for defendants, upon the authority of *Jennings* v. *Ward*, 2 Vern. 520, that the mortgagee can obtain no advantage by the mortgage except the payment of principal, interest and costs. It was held, however, both in the lower court and upon appeal that the provision was valid because it did not, on the one hand, clog the equity of redemption, nor on the other was it unreasonable in itself, as there was a corresponding covenant on the part of the mortgagee to sell the beer and liquors to the mortgagor.

MUNICIPAL CORPORATIONS.

Municipal Bonds, Conditional Bid

In an action to enjoin the delivery of certain corporate stock of the city of New York, by the comptroller, to any person other than the plaintiff, it appeared that the stock having been advertised as required by statute, said statute providing that the award should be made to the highest bidder, the plaintiff bid for same. "Our bid subject to the approval of the legality of the issues by our counsel." Defendant submitted on the same day a lower bid, unqualified in its terms, and the issue was awarded to him. Held, that plaintiff's bid was conditional, and therefore illegal: *Trowbridge et al.* v. *City of New York et al.* (Supreme Court of New York), 53 N. Y. Suppl. 616.

Negligence of Office, Vaccination

The Supreme Court of Georgia, in *Wyatt* v. *City of Rome*, 31 S. E. 188, decided that a municipal corporation while enforcing a valid ordinance requiring citizens and residents of the city to submit to vaccination, is exercising a governmental power, and is, there-

MUNICIPAL CORPORATIONS (Continued).

fore, not liable to a citizen who may sustain damage on account of impure vaccine matter negligently administered to him by one of the officers or agents of such corporation.

NEGLIGENCE.

That people who use electricity are practically quasi-insurers at certain times and places was held by the Kentucky Court of Appeals in *Overall* v. *Louisville Electric Light Co.*, 47 S. W. 442. The facts were that the plaintiff was an employe of a telephone company, and while working at the top of a pole fixing a wire of his company, it came in contact with one of the wires of the defendant company which was heavily charged and not properly insulated, from which plaintiff received a shock and was injured. Held, that an electric light company is liable for injuries resulting from its failure to furnish perfect protection from electric currents at points where persons will probably come into contact with its wires, and it is not sufficient to tell the jury that it is the duty of the defendant to observe the highest degree of care usually exercised by prudent persons engaged in the same or similar business to keep the wires so insulated as to be reasonably safe and free from danger.

Electricity, Care Required, Telephone Wire

The question as to how long a railroad company can block a crossing and the right of pedestrians to cross through cuts in the trains was before the Supreme Court of Pennsylvania in *Golden* v. *P. R. R. Co.*, 41 Atl. 302. It appeared that the plaintiff, a child of seven years, came to the crossing and found it blocked by the defendants' train, which block had been maintained for nearly a half-hour. The boy then went across the pavement to a point where there was an opening between the cars, and proceeded to cross, when the cars were suddenly backed without any warning, and he was injured. Held, that the block was unlawful, and that the above facts constituted negligence on the part of the defendant company.

Street Crossing, Unlawful Obstruction by Railroad

PARENT AND CHILD.

It is familiar law that services rendered by a child, even though married and presumed to be owing to natural affection, and not to compensation promised; and that loose statements of intention to pay, made by deceased parent, are not sufficient to rebut the presumption.

Contract for Services

PARENT AND CHILD (Continued).

Dash v. *Inabinet*, 3 S. E. (S. C.) 297, is a recent close case, in which the Appellate Court thought there was some evidence of a contract, which should have been left to the jury to pass upon.

PARTNERSHIP.

A and B became partners in the work on a public contract awarded them by a municipality. B went to the municipality for the purpose of closing the contract and furnishing the necessary security. The municipal authorities, having received from a third person false information as to the financial standing of A, refused to close the contract with him as a party. B did not inform A of the reasons for this action and without A's knowledge proceeded to close the contract in his own name. The Circuit Court for the Western District of Pennsylvania (*Miller* v. *O'Boyle*, 89 Fed. 140) properly sustained a bill for a preliminary injunction filed by A, on the theory that B was to be regarded as trustee for the firm, and that A might prevent B from excluding him from participating in the management of the business.

Confidential Relation, Good Faith

PROPERTY.

In a suit to foreclose a mortgage made to secure the payment of a promissory note, it appeared that the payee attempted to make a gift of the note to the defendant under the following circumstances: The payee, shortly before committing suicide, endorsed the note in blank and placed it in an envelope addressed to the defendant, which was left upon a table. The envelope contained also a letter giving directions as to the delivery of another letter. This sealed envelope was found by the defendant, when attracted to the room of the payee by the fatal pistol shot. It was picked up by the defendant and handed by him to the plaintiff, the executor of the suicide. A week or so before, the suicide had said to the defendant, referring to the note, "I might as well give it to you." The Supreme Court of Oregon held that although it was clear, from the evidence, that there was an intention to make a gift, yet that none had actually been made, since the second requisite of a valid gift, delivery, was not here satisfied. The alleged donor never parted with his dominion over the note; it remained under his absolute control: *Liebe* v. *Battman*, 54 Pac. 179.

Gift, Delivery

REAL PROPERTY.

Bill to Quiet Title, Defendant in Possession

In *Taylor* v. *Clark*, 89 Fed. 7 (Circuit Court, S. D. California), it is held that a bill to quiet title will not be entertained by the Federal courts where the defendant is in full possession of the land. This is true, though the statute law of the state in which suit is brought gives a right to maintain such a bill under such circumstances (see *Felton* v. *Justice*, 51 Cal. 529), because the Federal courts are governed in their equity jurisdiction by the practice of English Courts of Chancery. It has been held by the United States Supreme Court that a bill to quiet title could be maintained when neither of the parties was in possession of the premises: *Holland* v. *Challen*, 110 U. S. 15.

Deed, Covenant, "Private Dwellings," Apartment House

Property was conveyed by a deed containing a covenant that there should not be erected on the premises any building other than for the use or purpose of a private dwelling. This was a bill in equity brought to restrain the erection of a three-story frame flat house, with five rooms on a floor, suitable for three families, on the ground that it was not a "private dwelling" within the terms of the covenant. The Court of Chancery of New Jersey granted the bill.

Chancellor McGill said, "It is manifest that her [complainant's] purpose was to preserve the privacy and residential character of the property. . . . Not only does the term, 'a private dwelling,' by force of the word, 'dwelling,' restrict the character of buildings, by eliminating all buildings for business purposes, such as stores, factories, and the like, but it also, by force of the word 'private,' excludes buildings for residential purposes of public character, such as hotels or general public boarding and community houses. At the argument, counsel for the defendants characterized a flat as a number of private dwellings, built one upon another. If this is a true definition, such a building is objectionable to the restriction, because but a single private dwelling is contemplated, not a bunch of private dwellings. The restriction is to 'a private dwelling,' in the singular, not to a building of private dwellings in the plural. I think, also, that the flat cannot be deemed a private dwelling. It is really a community house, designed for the accommodation of more than an individual and his household, which I consider to be the sense in which the word 'private' is to be taken:" *Skillman* v. *Smathehurst et ux.*, 40 Atl. 855.

REAL PROPERTY (Continued).

The same result was reached in *Gillis* v. *Bailey*, 21 N. H. 149 (1850), in the interpretation of the words, "a single dwelling house."

Life Estates, Deed, Bona fide Purchaser

The Supreme Court of Michigan has recently held that where real property is deeded to a man for the express purpose of his obtaining credit on the strength of his ownership of the land, he to deed the property back to the grantor during his life, or to devise it to him in his will, the grantee takes but a life estate, and that on his death the grantor is entitled to the land as against all but *bona fide* purchasers and creditors of the grantee. The wife of the grantee was held not to be a *bona fide* purchaser who could claim as against the original grantor, where it appeared that the wife had voluntarily given her husband certain moneys and he had said that she should have everything he owned in return, and had deeded the premises a few days before his death: *Williams* v. *Williams*, 76 N. W. 1039.

Recording of Deed, Notice, Statute of Limitations

In *Davis et al.* v. *Monroe*, 41 Atl. 44, the question at issue concerned the title to a certain piece of land. Appellant had deeded another tract of land to one Cobb, but by fraud the deed was made to include the land in question, and was so recorded. The Supreme Court of Pennsylvania held that the recording of the deed was not constructive notice of the grantee's claim under it, and the statute of limitations did not, therefore, begin to run. The record is notice only to those who are bound to search for it, including parties subsequently dealing with the land, or concerned with its title. The grantor is under no obligations to see to its recording, or to examine the terms thereof; consequently it is no notice to him.

Rule in Shelley's Case

In *Lewis* v. *Bryce*, 41 Atl. (Pa.) 275, a devise to testator's daughters "during their lives—said property to descend and be inherited by said daughters' children and their heirs forever"—was held to vest only a life estate in the daughters, the court holding that the word "their" referred back to the word "children," and not to the word "daughters;" so that the case was not within the rule in *Shelley's Case*.

STREET RAILWAYS.

The Chicago General Railway Company filed a bill to enjoin Carter H. Harrison, and others, representing the city of Chicago,

STREET RAILWAYS (Continued).

Street Railway, Permit to String Wires, Construction

from cutting wires of complainants which were used to supply private motors in the lumber district of the city. The original permit to put up the wires was for "necessary feed wires" along the street car route. Such permit was held not wide enough to include the distribution of power to private motors. The proposed action of the mayor was accordingly not in violation of any charter right of complainants, and the injunction was refused: *Chicago St. Ry. Co.* v. *Ellicott*, 88 Fed. 941.

SURETYSHIP.

It is a familiar principle of suretyship law that one of several co-sureties, who signs upon the express condition that the others sign, is not bound where the others do not sign, unless the obligee had no notice of the condition. This was applied to exonerate the surety in *Middleboro Bank* v. *Richards*, 76 N. W. (Neb.) 528, the signature of the non-assenting surety, per an unauthorized agent, being, in the opinion of the court, a doubt which should have put the obligee on his guard. Nor was the subsequent ratification (by assent) of the unassenting surety sufficient to bind those who had stipulated for his original signature.

Co-Sureties, Signature by one, Condition

TELEGRAPH COMPANIES.

The Court of Civil Appeals of Texas, in an action against a telegraph company for negligence in failing to deliver a message, whereby plaintiff was prevented from attending the funeral of his child, held that the message—"Your child very low; come at once"—was sufficient to put the company on notice that the child might die at any moment, and called for prompt delivery: *Western Union Tel. Co.* v. *Waller*, 47 S. W. 396.

Non-delivery of Message, Notice

The same court, in *Western Union Tel. Co.* v. *Sweetman*, 47 S. W. 676, holds that the telegraph company is charged with notice of the relationship existing between the addressee and a sick person, concerning whom the telegram is sent, whether such relationship is disclosed therein or not.

Notice of Relationship